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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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09/417,428 10/13/99 LYMAN

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EXAMINER

CEGIELNIK, U

ART UNIT

PAPER NUMBER

3712

*3*

DATE MAILED:

04/26/00

Please find below and/or attached an Office communication concerning this application or  
proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/417,428**

Applicant(s)  
**Lyman**

Examiner  
**Urszula M. Cegielnik**

Group Art Unit  
**3712**



- ☐ Responsive to communication(s) filed on \_\_\_\_\_
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

- ☒ Claim(s) 1-17 ~~is~~ are pending in the application.
- Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-17 ~~is~~ are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- ☒ Notice of References Cited, PTO-892
- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2
- ☐ Interview Summary, PTO-413
- ☒ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Ballard. Ballard discloses a round clicker that has a center portion; a substantially planar peripheral portion surrounding the center portion; the center portion having a concave/convex shape, and manual manipulation of the device inverts the first and second surfaces between the two equilibrium positions.
3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Davis. Davis discloses a jumping toy that has all the features of the instant claimed invention. The two equilibrium positions are stable for a few seconds.

### *Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis. Davis


discloses all the features of the instant claimed invention except for the device having dimensions of a particular range; the device being made of a particular polymeric material; the surfaces having an illustration or different textures; the polymeric material being a colored resin, and the scent being added to the material. It is an obvious design choice as to what type of dimensions the device has; what type of material the device is made from; the device has an illustration on its surface; a scent added to the material, and the texture of the surface.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula Cegielnik whose telephone number is (703) 306-5806. The examiner can normally be reached Monday through Friday from 8:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bob Hafer, can be reached on (703) 308-2674. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7768.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

  
Robert A. Hafer  
Supervisory Patent Examiner  
Group 3700

Urszula M. Cegielnik  
Assistant Examiner